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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|----------------------|---------------------|------------------|
| 09/830,488 | 04/26/2001 | Vincent Pluvinage | RXSD1001-3 | 8079 |
| 22470 | 7590 | 07/13/2007 | EXAMINER | |
| HAYNES BEFFEL & WOLFELD LLP | | | BATES, KEVIN T | |
| P O BOX 366 | | | ART UNIT | |
| HALF MOON BAY, CA 94019 | | | PAPER NUMBER | |
| | | | 2155 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 07/13/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

| | |
|-----------------|------------------|
| Application No. | Applicant(s) |
| 09/830,488 | PLUVINAGE ET AL. |
| Examiner | Art Unit |
| Kevin Bates | 2155 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 June 2007.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 146, 148, 174-179 and 189-196 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 146, 148, 174-179, and 189-196 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date: _____
5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

This Office Action is in response to a communication made on June 6, 2007.

Claims 1-145, 147, 149-173, 180-188 have been cancelled.

Claim 146 has been amended.

Claims 146, 148, 174-179, and 189-196 are pending in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 146, 148, 174-175, 178-179, 189, 191-193, and 195-196 are rejected under 35 U.S.C. 102(e) as being anticipated by Berger (6684063).

Regarding claim 146, Berger teaches a device for producing customized audio data (Column 2, lines 2 – 3), comprising:

A headset, the headset including processing resources mounted thereon (Column 6, lines 23 – 28), including a data processor (Column 6, lines 23 – 28); a data storage medium, coupled to the data processor, storing a hearing profile of a customer (Column 2, lines 54 – 59; see also Column 3, lines 41 – 45);

an audio transducer (Column 6, lines 23 – 28, the ADC, amplifier, and the speaker), coupled to the data processor; a communication port coupled to the processor (Column 6, lines 26 – 27; the antenna);

logic to produce customized audio data, by processing audio data received on the communication port from an external source using the hearing profile (Column 2, lines 54 – 65); and

a computer program stored on the data storage medium executable by the data processor to communicate with an external data processing device providing a user interface supporting an interactive process using the audio transducer mounted on the headset to provide the hearing profile (Column 3, lines 20 – 38).

Regarding claim 174, Berger teaches a method for producing a hearing profile, comprising:

providing a headset having an audio transducer (Column 6, lines 23 – 28);

coupling the headset via a communication channel to an external data processor having a user interface (Column 6, lines 23 – 28);

executing an interactive process using the user interface and the audio transducer to develop a hearing profile (Column 3, lines 20 – 38);

producing a customized audio data product using the hearing profile (Column 2, lines 54 – 65); and

playing the customized audio data product on the headset (Column 1, lines 63 – 67).

Regarding claim 148, Berger teaches the audio data playback device of claim 146, wherein that the audio transducer comprises stereo speakers (Column 6, lines 25 – 27).

Regarding claim 175, Berger teaches the device of claim 174, wherein the customized audio data product comprises a transformation according to the hearing profile of the audio data product (Column 2, lines 54 – 65).

Regarding claim 178, Berger teaches the device of claim 174, including: logic to store the customized audio data product on a machine readable medium (Column 6, lines 5 – 10).

Regarding claim 179, Berger teaches the audio testing device of claim 174, indicate a port adapted to couple a removable data storage device to the data processor, and resources for playing an audio data product stored in the removable data storage device (Column 6, lines 5 – 10).

Regarding claims 189 and 193, Berger teaches the playback device of claims 146 and 174, wherein the hearing profile is provided by an interface allowing selection by the user according to personal preferences (Column 3, lines 20 – 38).

Regarding claims 191 and 195, Berger teaches the playback device of claims 146 and 174, including a computer program stored on the data storage medium executable by the processor to communicate with an external data processing device providing a user interface supporting an interactive process to modify the hearing profile (Column 3, lines 20 – 38).

Regarding claims 192 and 196, Berger teaches the playback device of claims 146 and 174, wherein the communication port comprises a port for wireless communication (Column 6, lines 25 – 27).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 176, 177, 190, and 194 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger in view of Campbell (6212496).

Regarding claim 176, Berger teaches the device of claim 174.

Berger does not explicitly indicate an interface by which the customized audio data product is received from a remote site.

Campbell teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) an interface by which the customized audio data product is received from a remote site (Column 6, lines 39 – 43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of having a cellphone maintain the profile and perform the customization for the hearing aid in order to allow the complex phone perform the operations and allow the hearing aid to be a simpler and not have to perform the transformation of the audio.

Regarding claim 177, Berger teaches the device of claim 174.

Berger does not explicitly indicate wherein the customized audio data product comprises at least a portion of the hearing profile, and the audio data product for transformation according to the hearing profile at a remote site.

Campbell teaches teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) the customized audio data product comprises at least a portion of the hearing profile, and the audio data product for transformation according to the hearing profile at a remote site (Column 6, lines 39 – 43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of having a cellphone maintain the profile and perform the customization for the hearing aid in order to allow the complex phone perform the operations and allow the hearing aid to be a simpler and not have to perform the transformation of the audio.

Regarding claims 190 and 194, Berger teaches the device of claims 146 and 174.

Berger does not explicitly indicate the hearing profile is provided using the interface according to a hearing test.

Campbell teaches teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) the hearing profile is provided using the interface according to a hearing test (Column 5, line 60 – Column 6, line 19).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of performing a hearing test in Berger's in order to create new hearing profiles or prescriptions for the user rather than having to have preprogrammed profiles.

Response to Arguments

Applicant's arguments filed June 6, 2007 have been fully considered but they are not persuasive.

The applicant argues that the "prescriptions" described in Berger, are not the same as the hearing profile that is created with an interactive process in the claims. The applicant also argues that the material relied upon in Berger is not arranged as required by the claim because they embody separate attributes of Berger's teaching.

The examiner disagrees, as seen in Column 3, lines 20 – 40, Berger discloses the prescriptions that are programmed into the processor. Included in this teaching is that the user of the system can tailor which prescription is operating on the system through an interactive process, such as typing a code into the system which involves a user interface that creates interactivity to enter the code to obtain the correct prescription. The prescription is then used with the headset and audio transducer to customize the audio output. There are no limitations in the claims how the hearing profile is created, only that it is provided, in addition to the user interface supporting the interactive process of providing the profile. So the fact that a prescription may have been made by an audiologist does not effect the prescription in regards to the hearing profile as claimed.

Regarding the idea that different embodiments of Berger are being relied upon, while as seen in Column 3, lines 20 – 40 and Column 6, lines 23 – 34 that they contain different embodiments of the main invention, or slight divergence of the main idea, there is no indication or negative teaching that either of the alternate embodiments cannot be used together or in other words are mutually exclusive embodiments. This type of argument can only apply if the applicant shows that those alternate embodiments weren't able to be combined into the main invention or if there was a negative teaching against their combination. There are no such indications or teachings that the two alternative embodiments used in the rejection cannot or should not be used together, but they just happen to be divergences or other possibilities of the main invention that can be used together or not.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571) 272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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June 25, 2007

Saleh Najjar
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SUPERVISORY PATENT EXAMINER